

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 150 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgement?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

CHANDRAM CHEMICAL INDUSTRIES SIDDHARTHBHAI RAVJIBHAI AMIN

Versus

SURAJ CHEMTECH LTD

Appearance:

1. Civil Revision Application No. 150 of 2002
MR DHIRAJ M PATEL for Petitioner No. 1
MR NS SHETH for Respondent No. 1

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 22/10/2002

ORAL JUDGEMENT

The present Civil Revision Application is filed against the order passed by the learned Aux. Chamber Judge, City Civil Court, Ahmedabad on 11th January 2002 below Application Exh.1 in Civil Misc. Application No. 238 of 2001 in Summary Suit No.2270 of 1999. By this order, the learned Chamber Judge has rejected the application for restoration of Summary Suit No.2270 of 1999.

2. The brief facts giving rise to the present revision application are that the present respondent original plaintiff has filed Summary Suit No.2270 of 1999

in the City Civil Court, Ahmedabad against the present petitioners - original defendants. The original plaintiff took out summons for judgment which was resisted by the original defendant by filing leave to defend application. On passing the order below the Summons for judgment, the City Civil Court granted conditional leave to defendants on depositing a sum of Rs.60,000/-.

3. There is no dispute about the fact that the amount has been deposited by the plaintiff and the only dispute is with regard to the time within which the said amount was required to be deposited. The petitioner has deposited the amount in seven installments and the time was extended every now and then. The balance amount of Rs.35,000/- was required to be deposited within the prescribed time and the time was extended upto 24.7.2000. The petitioner has given a cheque of Rs.35,000/-, however, the said cheque returned uncleared and therefore, he deposited an amount of Rs.35,000/- in cash on 7.8.2000. However, through oversight, the period to deposit the balance amount of Rs.35,000/- was not got extended and the Nazar of the Court has issued a non-payment certificate. An application was made by the plaintiff for a decree on account of non-compliance of the conditional order passed by the Court. The decree was passed and the execution proceedings were also initiated and the summons in the execution proceedings was issued on usual terms. The petitioner came to know about the ex-parte decree and hence moved an application for setting aside the ex-parte decree under Order 37 Rule 4 of the Code of Civil Procedure. The learned Judge has rejected the said application only on the ground that there was no special circumstances on the basis of which the decree can be set aside.

4. I have heard Mr.D.M.Patel, learned Advocate appearing for the petitioner and Mr.N.S.Sheth, learned Advocate appearing for the respondent. As stated earlier, it is an admitted position that the conditional amount has been deposited by the present petitioner. The time for depositing the balance amount of Rs.35,000/- was extended upto 24.7.2000 and the said amount was actually deposited on 7.8.2000. Hence, there is a delay of only 15 days and even at the time when the Nazar of the Court has issued the non-payment certificate, the amount was already deposited. Though all these facts were brought to the notice of the learned Chamber Judge, the decree was passed. It is admittedly a mistake committed by the petitioner or the Advocate of the petitioner in not getting the time extended from the Court. But, due to

these reasons only, the petitioner should not be faced with an ex-parte decree. Under the special circumstances like this, the conditional amount was deposited though little late and the suit should not have been decreed in this manner. I am, therefore, of the view that the learned trial Judge is not justified in rejecting the application of the petitioner for setting aside the ex-parte decree. At the same time, it is also required to be noted that the petitioner has shown negligence in not applying for extension of time and in pointing out the correct facts before the learned Judge and for that purpose, some cost is required to be awarded to the respondent.

5. After considering the entire facts and circumstances and after having heard learned Advocates appearing for the parties, I am of the view that the impugned order is required to be quashed and set aside and the respondent in the present revision application, i.e. original plaintiffs are entitled to get cost of Rs.2,500/- (Rupees Two thousand and five hundred only). I accordingly quash and set aside the impugned order and and restore the Summary Suit No. 2270 of 1999 to the file directing the learned Judge to hear and decide the said suit as expeditiously as possible preferably within six months from the date of receipt of the writ of this Court or the certified copy of this order, whichever is earlier. The present petitioner is directed to pay the amount of cost of Rs.2,500/- (Rupees Two thousand and five hundred only) to the respondent, being cost of this litigation, within 30 (thirty) days from today.

6. With the above observations and directions, this Civil Revision Application is allowed. Rule is made absolute. It goes without saying that unless and until the amount of cost is paid and/or deposited by the petitioner, the suit shall not proceed further.

(K.A. Puj, J.)
Sreeram.